

REMARKS

Drawings

Applicant thanks the Office for accepting the Drawings as noted in the Office Action Summary.

Double Patenting:

The Office has rejected the claims presented herein under the nonstatutory double patenting rejection and alleges that the present claims 1-23 are unpatentable over claims 1-20 of U.S. Pat. No. 6,999,498. The Office acknowledges that the claims are not identical, but alleges that they are not patentably distinct and the claimed subject matter would have been obvious.

Similarly the Office rejected claim 1 of the present application on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claim 26 of U.S. Pat. No. 6,954,482. Once again, the Office acknowledges that the claims are not identical, but alleges that they are not patentably distinct. The cited patents and the present application share common ownership and also at least one common inventor.

Terminal Disclaimer for Non-Statutory Double Patenting

The Applicant respectfully disagrees with the conclusions by the Office but agrees to file a terminal disclaimer to advance processing and obviate the rejection. A rejection based on a nonstatutory type of double patenting is obviated by filing a terminal disclaimer in the application or proceeding in which the rejection is made. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); *In re Knohl*, 386 F.2d 476, 155 USPQ 586 (CCPA 1967); and *In re Griswold*, 365 F.2d 834, 150 USPQ 804 (CCPA 1966)

It should be understood the filing of a terminal disclaimer to obviate a rejection based on nonstatutory double patenting is **not** an admission of the propriety of the rejection. *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991). The court indicated that the "filing of a terminal disclaimer simply serves the

statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection."

Review and allowance is respectfully requested.

Applicant believes the above amendments and remarks to be fully responsive to the Office Action, thereby placing this application in condition for allowance. No new matter is added. Applicant requests speedy reconsideration, and further requests that Examiner contact its attorney by telephone, facsimile, or email for quickest resolution, if there are any remaining issues.

Respectfully submitted,

/Scott J. Asmus, Reg. No. 42,269/

Cus. No. 42716
Maine & Asmus
PO Box 3445
Nashua, NH 03061-3445
Tel. No. (603) 886-6100, Fax. No. (603) 886-4796
Patents@maineandasmus.com

Scott J. Asmus, Reg. No. 42,269
Andrew P. Cernota, Reg. No. 52,711
Kristina M. Grasso, Reg. No. 39,205
Attorneys/Agents for Applicant